

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2539 OF 2016
(Arising out of SLP(C) No. 10378/2013)

OMKAR PRASAD

.. APPELLANT(S)

VERSUS

DEVANAND CHOUDHURY & ORS.

.. RESPONDENT(S)

O R D E R

1. Leave granted.

2. Respondent No.1 had filed Writ Petition No. 23170 (W) of 2012 in the High Court of Calcutta, wherein it was alleged that the appellant-herein had constructed a building on the land which was declared surplus and vested in the State and therefore such a construction was illegal and should be demolished. The appellant was also impleaded as one of the respondents in the writ petition. Notices were issued which were served on the appellant. However, the appellant did not appear.

3. After hearing the matter, the High Court has passed the impugned order dated 16.01.2013 accepting the contention of respondent No.1 that the land was surplus and therefore vested in the State and thus the appellant could not have raised any construction thereupon.

4. This order is under challenge in this appeal. The case set up by the appellant is that he had purchased the land in question and it is further argued that the land cannot be treated as surplus or vested in the State. This is disputed by the respondent(s). Before us the appellant has given sufficient reasons why he could not appear before the High Court and therefore could not present his version. In these circumstances, it would be appropriate to remit the case back to the High Court for fresh decision on merits after hearing all the parties. We, thus, set aside the impugned order passed by the High Court and remit the case back to the High Court.

5. The appeal is accordingly allowed.

6. The appellant shall be permitted to file counter affidavit in the writ petition within four weeks from today. Rejoinder thereto may be filed within four weeks' thereafter.

7. We may note that the appellant shall not create third party rights in the property in question. We request the High Court to make endeavor to dispose of the matter expeditiously.

.....J.
[A.K. SIKRI]

.....J.
[R.K. AGRAWAL]

NEW DELHI,
MARCH 04, 2016.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 10378/2013

(Arising out of impugned final judgment and order dated
16/01/2013 in WP No. 23170(W)/12 passed by the High Court Of
Calcutta)

OMKAR PRASAD

Petitioner(s)

VERSUS

DEVANAND CHOUDHURY & ORS.

Respondent(s)

(With appln. (s) for permission to file additional documents
and interim relief and office report) (FOR FINAL DISPOSAL)

Date :04/03/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE R.K. AGRAWAL

For Petitioner(s) Mr. Soumya Chakraborty, Adv.
Mr. Debashis Sinha, Adv.
Mr. Danish Zubair Khan, Adv.For Respondent(s) Mr. Sankar Ch. Ghosh, Adv.
For State Mr. Mrinal Kanti Mandal, Adv.
Mr. Parijat Sinha, Adv.rr.1 Mr. Aditya Dhar, Adv.
Mr. Ghalib Kabir, Adv.
Dr. Kailash Chand, Adv.

Mr. L.C. Agrawala, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed
order.Consequently, all the applications are
disposed of.[Charanjeet Kaur]
A.R.-cum-P.S.[Tapan Kr. Chakraborty]
Court Master

[Signed order is placed on the file]